IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6136 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIRENDRARAILAL MOHANDAS VASANI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 6136 of 1994

MR TUSHAR MEHTA for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

DS AFF.NOT FILED (N) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 17/10/2003

ORAL JUDGEMENT

1. Virendrarai Lal Mohandas Vasani - petitioner has filed this petition for a writ of mandamus or any other

writ or direction quashing and setting aside the letter dated 2.7.1993 issued by the Deputy Executive Engineer for recovery regarding leave encashment. The petitioner also prayed for restraining the respondent permanently from suspending monthly pension of Rs.891/- which may be revised from time to time and from recovering the pension already paid to the petitioner and from recovering the gratuity amount of Rs.16, 995/- already paid and from recovering the commuted pension of Rs.22,120/- already given and from recovering the amount of leave encashment of 240 days on the basis of last pay drawn plus dearness allowance and other allowances amounting to Rs.5500/-.

2. It may be noted that the aforesaid matter was heard and ultimately by judgment dated 8th February, 2002, this Court had rejected the said petition.

3. Thereafter the learned advocate for the petitioner has filed Misc.Civil Application No.65/03 before this Court on 11.1.2003 with a prayer to review and recall the order dated 8.2.2002 passed by this Court in the aforesaid matter. The said application has been allowed by this Court vide order dated 29.9.2003 and also recalled the order passed by this Court earlier in this behalf.

4. After recalling the order, I have heard Mr.Devang Vyas, learned advocate for Mr.Tushar Mehta for the petitioner and Mr.J.M.Barot, learned advocate for Mr.H.S.Munshaw for the respondent.

5. In view of the aforesaid development, now I am giving fresh judgment in this behalf.

6. The facts giving rise to this petition are as under:-

6.1 The petitioner was appointed in Survodaya Scheme in the year 1953 as Sub-Center Worker on a monthly salary of Rs. 70/-. The petitioner worked as Organiser under the aforesaid scheme since 1.4.1966 till 1981. It is contended that the Survodaya Scheme was discontinued in the year 1980 by the State Government by virtue of the Resolution dated 18.7.1980.

6.2 Being aggrieved and dissatisfied with the said action, the petitioner filed Special Civil Application No. 2125 of 1980. It has been contended that between the year 1980 and 1981 the petitioner continued as organiser by virtue of interim orders passed by this court in Special Civil Application No. 2125 of 1980 where the proposed termination of the service of the

employees of the Survodaya Scheme was challenged.

6.3 It has been contended that ultimately on 1.9.1981 the Government absorbed the staff working under the Survodaya Scheme in the State service and posted them under various District panchayats and to that effect resolution dated 30.7.1981 was passed. After the aforesaid absorption the petitioner was posted as Junior Clerk in the District Panchayat, Mehsana.

6.4 It has been submitted that the petitioner and others were being discriminated against by not treating them equally and on par with other similarly situated employees and therefore a petition was filed through Gujarat Panchayat Ex-Cadre Karmachari Sangh being Special Civil Application No. 4246 of 1983. In the said petition a settlement was arrived at which resulted into the passing of the Government Resolution dated 15.12.1987. It has been stated that by the resolution dated 15.12.1987 the petitioner and others were absorbed as Ex-Cadre employees in the panchayat service with effect from 1.4.1987 and different designations were given having regard to their functions and duties. The petitioner was put in the running pay scale of Rs. 950-1500 as Junior Clerk. The petitioner retired as Junior Clerk on 31.12.1991. The petitioner was and is being paid monthly pension of Rs. 891/- including dearness allowance and medical allowance. The petitioner was paid gratuity of Rs. 16,995/-, commuted pension of Rs. 22,124/- and leave encashment of 240 days on the basis of last drawn salary plus dearness allowance.

6.5 The respondents issued a letter dated 2.7.1993 as well as reminder to that letter calling upon the petitioner to return part of the leave encashment already paid to the petitioner. The learned counsel for the petitioner contended that the action of the authority calling upon the petitioner to pay back amount which was already paid to the petitioner is illegal. It was contended that by virtue of resolution dated 15.12.1987 the ex-cadre employees shown in the Schedule I to the said resolution which includes the petitioner were absorbed in the panchayat service from 1.4.1987 and therefore as per the said resolution the petitioner and other employees will be given benefits with regard to promotion, leave, pension etc. from 1.4.1987. The learned counsel for the petitioner submitted that the petitioner retired as Junior Clerk while in service in the Mehsana District Panchayat after 1.4.1987. Therefore, as per the resolution dated 15.12.1987, the petitioner is entitled to all the benefits like pension,

leave, leave encashment, gratuity etc. as are given to other retiring servants of the panchayat.

7. On behalf of respondent No. 1 Mr. Munshaw, learned advocate, appeared. He filed an affidavit on behalf of respondent No. 1. In the said affidavit it has been stated that the Government of Gujarat through its Panchayat Housing and Urban Development Department passed a Government Resolution dated 30.7.1981 through which it was decided to continue those workers who have completed one year's service by way of appointing them in the District Panchayats as Ex-cadre employees. It was submitted that from perusal of the said Resolution dated 30.7.1981 it would be clear that they were to be taken as Ex-cadre employees in the same pay scale and allowance and were not entitled to the promotion, retirement benefits etc. It is stated that accordingly the present petitioner was employed as Ex-cadre employee in Mehsana District Panchayat by the District Development Officer, Mehsana District Panchayat through orders dated 31.8.1981. Thereafter several representations were made by the said employees to the State Government for various benefits and after careful consideration, the Government of Gujarat through its Panchayat and Rural Housing Department passed a Resolution on 15.12.1987 granting several benefits to such Sarvoday Yojana workers who were taken as Ex-Cadre employees in the District Panchayats. From the above, it would be clear that the petitioner became eligible for all the benefits like promotion, leave, pension etc. with effect from 1.4.1987. It is stated that the petitioner retired on attaining the age of superannuation with effect from 31.12.1991 and on that date he had not completed five years of the service with effect from 1.4.1987. In view of the same the Audit Authority on perusal of the record found that the petitioner was overpaid a sum of Rs. 10,992/- towards gratuity, Rs. 18,457.46 ps. towards commuted pension and made audit paras for recovery of the said amount. Copies of the said audit paras have been annexed with the affidavit in reply. It was stated that petitioner was entitled to the benefits of commutation of earned leave commencing from 1.4.1987 to 31.12.1991 only and he was overpaid an amount of Rs. 5,375/- for 97 days which was also required to be recovered. It was submitted that the petitioner was incorrectly given the benefit of leave encashment for 240 days and paid Rs. 13,184/- but in fact the petitioner was entitled to accumulation of earned leave for 135 days for the period commencing from 1.4.1987 to 31.12.1991 and as he has enjoyed 22 days earned leave he was eligible and entitled to encashment of leave of only 113 days but by mistake due to wrong

calculation he was paid additional amount of Rs. 5,374/which is required to be recovered. In view of the same, the order passed by the respondent authority for the recovery of the excess paid amount is legal, just and in the interest of administration and public at large as well as public exchequer.

8. Mr.Tushar Mehta, learned advocate for the petitioner has submitted that the entire basis of the Government stand is the resolution dated 15.12.1987 passed by the Government which is also the basis of the affidavit filed by the respondent authority in this behalf. He submitted that the effect of the said resolution is now not binding to the Government.

8.1 In support of the aforesaid stand, he has relied upon the judgment of this Court in Special Civil Application No.1696 of 1996 with SCA No.11461 of 1994 with SCA No.14073 of 1994 decided my learned Brother Justice C.K.Buch on 16.10.2001.

8.2 He has further relied upon the following observations particularly page 8 and 9 which reads as under:

> "... Undisputedly the present petitioners have served for several years in the panchayat service, the State should not have hesitation in considering their earlier service rendered to the State during 1981 to 1987 or even prior to that day i.e. the day on which they were recruited by the Sarvodaya Yojna. As per the prevailing policy of earlier years it is rightly submitted that when Sarvodaya Yojna scheme was envisaged the State policy was in confirmity at that relevant point of time and therefore this petition should be allowed. The Government Resolution dated 15.12.1987 annexure-I and other orders rejecting the request to grant pensionary benefit are hereby quashed and set-aside qua all the three present petitioners and shall not have binding effect on the present petitioners. The State is directed to consider the services rendered by present petitioners from their initial date of appointment when they were absorbed in the Panchayat cadre i.e. from the year 1980-81 till the date of retirement or otherwise for pensionary benefits as continuous service. Further it is observed that this period should be treated to grant pensionary benefit

only and they will not be entitled to claim any cash or other financial benefit. I am told that the present petitioners were given other benefits like leave etc. for their earlier services with Sarvodaya Yojna scheme."

8.3 He has further relied upon the judgment of this Court (Coram: P.B.Majmudar, J.) dated 7.8.2002 decided in Special Civil Application No.6820 of 2001. After referring to the aforesaid judgment of Justice C.K.Buch, in para 8 on page 5 my learned Brother Justice P.B.Majmudar observed as under:

"para.8 Since the issue is accordingly covered by the aforesaid judgment, this petition will have to be allowed and it is held that the petitioner is entitled to pensionary benefits and for that purpose, his services from 1980-1981, till he retired by way of superannuation, should be treated as "continuous service". By taking into account the aforesaid period, the pension of the petitioner should accordingly be fixed at the earliest."

8.4 He has also relied upon another judgment of this Court (Coram: B.J.Shethna, J.) dated 11.1.2002 decided in Special Civil Application No.1295 of 1989 with Special Civil Application No.5573 of 1989, where my learned Brother Justice B.J.Shethna has relied upon the judgment of this Court in SCA No.6912/87 in the matter of Mukundbhai Babubhai Rawal vs. State of Gujarat and others decided on 18.11.98 by this Court (Coram: Kundan Singh, J.) wherein the Court had already granted benefits in this behalf.

8.5 He has also relied upon one letter dated 5.4.2002 addressed by Joint Secretary, Panchayat Housing & Rural Development Department, State of Gujarat, to the District Development Officers, Surendranagar and Valsad stating that the Government had accepted the decision passed by this Court in SCA No.1696/96, 11461/94, 14073/94 and decided not to prefer any appeal. In view of the aforesaid judgment, the Government had already issued instruction to implement the said judgment in this behalf.

9. In view of the aforesaid judgment, in my view, the entire basis of the Government Resolution dated 15th December, 1987, is required to be quashed and set aside and accordingly the same is quashed and set aside. The petition is allowed.

10. This Court is, therefore, pleased to issue writ of certiorari or writ in the nature of certiorari and writ of mandamus pleased to quash and set aside the communication dated 2nd July, 1993, issued by the Government, and this Court further directed the respondents, their agents and servants restraining them permanently from suspending the monthly pension of Rs.891/- which may be revised from time to time, and from recovering the pension already paid, and from recovering the commuted pension of Rs.22,120/- already given, and from recovering the amount of leave encashment of 240 days on the basis of the last pay drawn plus D.A. and other allowances amounting to Rs.5,500/-. This Court pleased to issue writ of mandamus directing the respondent to calculate the pensionary benefits of the present petitioner by 13th December, 2003, and should see that the arrears are cleared within four months from the date of receipt of the writ. The respondents authorities are further directed that they shall pay the regular pensionary benefits to the petitioner immediately preferably after one month from the receipt of writ of this Court.

11. It may be true that the petitioner had originally did not challenge the resolution of 1987 but in fact he had already challenged the order dated 2nd July, 1993, in which the Government has relied upon the resolution dated 15.12.87. It is no doubt true that my learned brother Justice C.K.Buch has quashed the said resolution only in relation to three petitioners but subsequent decisions of my learned Brother Justices B.J.Shethna and P.B.Majmudar, the Government also by communication have already accepted the same.

12. In view of this peculiar facts and circumstances of the case, particularly the petitioner being a senior citizen aged about 65 years, it will not be possible for this Court again to relegate the petition for amendment in the petition so that there may be further delay will be caused in connection with obtaining the pensionary benefits. In view of this peculiar facts and circumstances of the case, this petition is allowed. The respondents are directed not to recover any amount from the petitioner if it is already paid to the petitioner in this behalf.

13. I am told that at present the respondent authority had decided to stop the pension of the petitioner. The said action of the respondent authority is bad in law. The respondent authority is directed to

release the pension of the petitioner forthwith.

14. In view of the same, the following directions are issued to the respondents authorities.

(i) This Court pleased to quash and set aside the communication dated 2nd July, 1993, produced at Annexure 'A' by which certain directions claimed by the respondents.

(ii) The respondents, their agents and servants are restrained permanently from suspending the monthly pension of Rs.891/- which they have suspended recently and they are further directed to pay the same forthwith and they are further directed to pay the pension to the petitioner or any other revised pension from time to time.

(iii) The respondents, their agents and servants are further restrained from recovering the pension already paid, and from recovering the commuted pension of Rs.22,120/- which was already given to the petitioner.

(iv) The respondents are further restrained from recovering the amount of leave encashment of 240 days on the basis of the last pay drawn plus D.A. and other allowances amounting to Rs.5,500/-.

(v) As regards pensionary benefits, the respondents are directed to commute the same within three months from the date of receipt of the writ of this Court.

15. In view of the aforesaid discussions and observations, this petition is disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.M. Mehta, J.)

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